# Lembaga Kemajuan Tanah Persekutuan & Anor v Tan Sri Hj Mohd Isa bin Dato' Hj Abdul Samad & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCvC-843–11 OF 2019
EDDIE YEO JC
9 MAY 2025

*Civil Procedure — Evidence — Remote communication technology — Application for leave be granted to testify through remote communication technology by way of Zoom throughout entire proceedings — Whether application should be allowed — Courts of Judicature Act 1964 s 15A — Rules of Court 2012 O 33A & O 92 r 4*

Felda Land Development Authority ('FELDA') was the registered proprietor and beneficial owner of 24 parcels of lands in Jalan Semarak, Kuala Lumpur. By a letter of award, FELDA Investment Corp ('FIC') purportedly appointed Synergy Promenade Sdn Bhd ('SPSB') as the master developer of a proposed development project to develop the FELDA Semarak lands. FELDA and FIC commenced an action against, inter alia, the 12th defendant (sued as a partner of Messrs Yeap, Yong & Amy) and the 13th to 15th defendants who were solicitors carrying on practice as partners of Messrs Yeap, Yong & Amy. FELDA and FIC contended that the 12th defendant and the other partners of Messrs Yeap, Yong & Amy had conspired with and dishonestly deprived them of the FELDA Semarak lands. Hence this application by the 12th defendant pursuant to s 15A of the Courts of Judicature Act 1964 and O 33A and O 92 r 4 of the Rules of Court 2012 praying for an order inter alia that leave be granted for the 12th defendant to testify through remote communication technology by way of Zoom (or any other platform of similar nature as may be directed by the court) throughout the entire proceedings. The reason for the application was, inter alia, that the 12th defendant had relocated to USA since the year 2017 and was currently gainfully employed as a preschool teacher.

**Held**, dismissing the application:

(1) This application filed was akin to having a second bite of the cherry. During the case management, the court had directed that the 12th defendant to testify physically in court, for that matter this case in its entirety including the case management to be dealt with by physical attendance. This case was not an ordinary case, this was a case of public interest and must be dealt with efficiently, effectively and expeditiously. If the evidence of the 12th defendant was allowed to be conducted by Zoom, this order if granted would be prejudicial to the other parties. The

interest of justice was best served when the entire judicial proceedings of these suits was dealt with physically in open court. The 12th defendant was sued as a partner of Messrs Yeap, Yong & Amy and not in her personal capacity. Hence, the grounds that justice of the case lied with allowing the 12th defendant to testify remotely was not justifiable in the circumstances of the case. The 12th defendant was ordered to testify physically (see para 33).

**[Bahasa Malaysia summary**

Lembaga Kemajuan Tanah Persekutuan ('FELDA') adalah pemilik berdaftar dan pemilik benefisial bagi 24 bidang tanah di Jalan Semarak, Kuala Lumpur. Melalui satu surat anugerah, Perbadanan Pelaburan Felda ('FIC') dikatakan telah melantik Synergy Promenade Sdn Bhd ('SPSB') sebagai pemaju utama bagi cadangan projek pembangunan untuk membangunkan tanah-tanah FELDA Semarak. FELDA dan FIC telah memulakan tindakan terhadap antara lain, defendan ke-12 (disaman sebagai rakan kongsi Tetuan Yeap, Yong & Amy) dan defendan ke-13 hingga ke-15 yang merupakan peguam yang menjalankan amalan sebagai rakan kongsi Tetuan Yeap, Yong & Amy. FELDA dan FIC berhujah bahawa defendan ke-12 dan rakan-rakan kongsi lain Tetuan Yeap, Yong & Amy telah berkomplot dan dengan tidak jujur telah melucutkan mereka daripada tanah-tanah FELDA Semarak. Oleh itu, permohonan ini oleh defendan ke-12 menurut s 15A Akta Mahkamah Kehakiman 1964 dan A 33A dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012 memohon perintah antara lain, bahawa kebenaran diberikan kepada defendan ke-12 untuk memberi keterangan melalui teknologi komunikasi jarak jauh melalui Zoom (atau mana-mana platform lain yang serupa yang mungkin diarahkan oleh mahkamah) sepanjang keseluruhan prosiding. Alasan bagi permohonan tersebut adalah antara lain bahawa defendan ke-12 telah berpindah ke Amerika Syarikat sejak tahun 2017 dan kini bekerja sebagai guru prasekolah.

**Diputuskan**, menolak permohonan:

(1) Permohonan yang difailkan ini adalah seolah-olah mencuba nasib kali kedua. Semasa pengurusan kes, mahkamah telah mengarahkan defendan ke-12 untuk memberi keterangan secara fizikal di mahkamah, oleh itu kes ini secara keseluruhannya termasuk pengurusan kes akan dikendalikan dengan kehadiran fizikal. Kes ini bukanlah kes biasa, ia adalah kes kepentingan awam dan mesti dikendalikan dengan cekap, berkesan dan segera. Sekiranya keterangan defendan ke-12 dibenarkan untuk dijalankan melalui Zoom, perintah ini jika dibenarkan akan memudaratkan pihak-pihak lain. Kepentingan keadilan dapat dilaksanakan sebaik-baiknya apabila keseluruhan prosiding kehakiman kes-kes ini dikendalikan secara fizikal di mahkamah terbuka. Defendan ke-12 didakwa sebagai rakan kongsi Tetuan Yeap, Yong & Amy dan bukan atas kapasiti peribadinya. Oleh itu, alasan bahawa keadilan kes

terletak pada membenarkan defendan ke-12 memberi keterangan dari jauh adalah tidak wajar dalam keadaan kes ini. Defendan ke-12 telah diperintahkan untuk memberi keterangan secara fizikal (lihat perenggan 33).]

**Cases referred to**

*Abd Rahman bin Soltan & Ors v Federal Land Development Authority & Anor and other appeals* [2023] 4 MLJ 318; [2023] 7 CLJ 705, CA (refd)
*Ing Bank NV v Anish Resources Sdn Bhd* [2022] MLJU 591, HC (refd)
*Karen Yap Chew Ling v Binary Group Services Bhd and another appeal* [2023] 4 MLJ 792; [2023] 7 CLJ 534, CA (refd)
*Low Han Kok & Anor v Yap Sien Toh & Ors* [2023] MLJU 741, HC (refd)

**Legislation referred to**

Courts of Judicature Act 1964 s 15A
Rules of Court 2012 O 33A, O 33A r 3, O 92 r 4

*Kumar Kanagasingam (with Wong Han Wey, Medha Ong Ann Ting and Harshinie P Paranitharan) (Lee Hishammuddin Allen & Gledhill) for the plaintiffs.*
*Wong Hok Mun (with Tan Ying Xuan) (Wong Hok Mun Partnership) for the 12th defendant.*

**Eddie Yeo JC:**

NOTICE OF APPLICATION

**[1]** This is an application by the 12th defendant (filed by Messrs Azim, Tunku Farid & Wong) pursuant to s 15A of the Courts of Judicature Act 1964, O 33A and O 92 r 4 of the Rules of Court 2012 for the following orders:

(a) that leave be granted for the 12th defendant in the main suit, Amy Loh Shook Fun (sued as a partner of Messrs Yeap, Yong & Amy) to testify via remote communication technology by way of Zoom (or any other platform of similar nature as may be directed by this court) throughout the entire proceedings for the above-captioned suit;

(b) should prayer (a) be allowed, the parties in the above-captioned suit shall be at liberty to appoint an independent law firm in Maryland, USA of their choice as supervising solicitors, at their own costs and expenses for:

(i) the 12th defendant to be present at the said law firm to give her testimony at the said law firm via remote communication technology as directed by this court; or

(ii) alternatively, the supervising solicitors may be present at the location where the 12th defendant will testify;

(c) notwithstanding (b) above, the parties in the above-captioned suit shall be at liberty to dispense with the appointment of supervising solicitors. In such a circumstance, the parties shall be at liberty to mutually agree on a 'protocol for testimony by way of remote communication technology';

(d) alternatively, and only in the event that (a) above is not allowed, specific trial dates be allocated for the 12th defendant to testify physically;

(e) the costs of this application be in the cause; and

(f) such further order or directions or relief that this honourable court deems fit and/or expedient be granted or ordered.

**[2]** The brief grounds of this application are, inter alia, as follows:

(a) the 12th defendant has relocated to Maryland, USA since year 2017 and she is currently working as a preschool teacher there;

(b) the 12th defendant is dependent on her income from these preschool jobs for her living expenses;

(c) given the substantial number of parties, witnesses, and trial dates involved, it is difficult/impossible to estimate when the 12th defendant's turn is to testify;

(d) even if specific trial dates have been allocated for the 12th defendant to testify in person, there remains uncertainty that the cross-examination and re-examination will be completed within the allotted time;

(e) the nature of the 12th defendant's employment as a preschool teacher makes it unfeasible for her to apply for continuous leave across all trial dates;

(f) it is unlikely that leave of such significant length will be granted. In addition, securing leave on short notice is unlikely given the demands of her role which involves pastoral and teaching responsibilities towards the children under her care;

(g) the justice of the case lies with allowing the 12th defendant to testify remotely; and

(h) such further grounds for this application are as set out in the affidavit in support affirmed by Amy Loh Shook Fun on 22 November 2024 (encl 718).

## BACKGROUND PRECEDING THE NOTICE OF APPLICATION

**[3]** When this matter was called for case management on 16 October 2024 before this court, counsel for the 12th defendant from Messrs Azim, Tunku Farid & Wong has orally requested for the 12th defendant's evidence to

be conducted by Zoom. By encl 801 the notice of change of solicitors dated 3 January 2025 was filed by Messrs Wong Hok Mun Partnership solicitors/counsel for the 12th defendant to the 15th defendant.

**[4]** The concern of the plaintiffs is about costs in respect of the different time zone and the appointment of supervising solicitors in the United States and there are more than 20 lawyers who will be going to cross-examine the 12th defendant pertaining to the issue of conspiracy and fraud. This court when dealing with this request, briefly outlined the reasons why Zoom is going to be an obstacle as connectivity is much to be desired. The court then ordered that it is in the best interest of justice for the 12th defendant to appear physically. Be that as it may, counsel acting for the 12th defendant have been instructed to file a formal application for her to testify via Zoom.

**[5]** Enclosure 717 was fixed for case management on 12 December 2024. At the onset, the plaintiffs are objectionable to the said application. Directives were given to both the plaintiffs and the 12th defendant to file affidavit in reply by 10 January 2025 and reply by the 12th defendant to be filed by 7 February 2025. The parties were directed to file their written submissions by 3 March 2025 and reply submissions by 7 April 2025. The court heard the parties in respect of application in encl 717 on 9 May 2025.

**[6]** The cause papers filed in relation to encl 717 are as follows:

(a) 12th defendant's affidavit in support (encl 718), reply affidavit (encl 841) and additional affidavits (encl 866 and 880);

(b) plaintiffs' affidavit in reply (encl 830) and affidavit (2) (encl 875);

(c) 12th defendant's written submissions (encl 881) and submissions in reply (encl 889) and bundle of authorities (encl 882) filed by Messrs Wong Hok Mun Partnership; and

(d) plaintiffs' written submissions (encl 884), reply submissions (encl 890) and bundle of authorities (encl 885) filed by Messrs Lee Hishammuddin Allen & Gledhill.

BRIEF FACTS (ENCL 884)

**[7]** At all material times, Felda Land Development Authority ('FELDA') is the registered proprietor and beneficial owner of 24 parcels of lands in Jalan Semarak, Kuala Lumpur. By a letter of award dated 24 January 2014, FELDA Investment Corp ('FIC') purportedly appointed Synergy Promenade Sdn Bhd ('SPSB') as the master developer of a proposed development project to develop the FELDA Semarak Lands. The proposed development came to be known as the Kuala Lumpur Vertical City Project.

**[8]** FELDA and FELDA Investment Corporation ('FIC') commenced the original action against, inter alia, the 12th defendant Amy Loh Shook Fun (sued as a partner of Messrs Yeap, Yong & Amy) and the 13th defendant, the 14th defendant and the 15th defendant in the original action, who were solicitors carrying on practice as partners of a legal firm known as Messrs Yeap, Yong & Amy.

**[9]** In essence, FELDA and FIC contend that the 12th defendant and the other partners of Messrs Yeap, Yong & Amy have conspired with and dishonestly assisted FELDA's previous board, FIC's previous board, FELDA and FIC's previous management, SPSB and its related entity, Synergy Promenade KLVC Sdn Bhd ('SPKLVC'), their directors, Abdul Rahman Soltan and Noraini bt Soltan to deprive FELDA and FIC of the FELDA Semarak Lands.

**[10]** The conspiracy against FELDA and FIC were carried out through a series disputed agreements or instruments all of which were without or lacked commercial sense causing loss and damage to FELDA and FIC as follows:

(a) FIC letter of award issued by FIC to SPSB;

(b) letter of award dated 2 June 2014 issued by FELDA to FIC;

(c) development agreement purportedly dated 2 June 2014 between FIC and SPSB;

(d) power of attorney dated 3 June 2014 executed by FELDA in favour of SPSB;

(e) lease agreement dated 24 February 2015 between SPSB as the lessor and FIC as the lessee;

(f) a sale and purchase agreement dated 2 December 2015 and three sale and purchase agreements all dated 7 November 2016 executed by Abdul Rahman and Noraini on behalf of both FELDA and SPSB and/or SPKLVC;

(g) 16 memorandum of transfers executed between 21 July 2016 and 6 March 2017 executed by Abdul Rahman and Noraini on behalf of both FELDA and SPSB and/or SPKLVC;

(h) deed of assignment of lease dated 29 September 2016 executed by Abdul Rahman and Noraini on behalf of both FELDA and SPKLVC; and

(i) memorandum of understanding dated 15 January 2018 executed by FELDA, SPSB and SPKLVC.

A THE LAW

**[11]** The court may conduct proceedings through remote communication technology as provided in s 15A of the Courts of Judicature Act 1964 (Act 91) by the Courts of Judicature (Amendment) Act 2020 (Act A1621) on 22 October 2020 which reads as follows:

B

> 15A Court may conduct proceedings through remote communication technology.
>
> (1) Without limiting to section 15, the Court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology.
>
> C
>
> (2) In the case of the High Court, the place in which the High Court is held to conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology shall be deemed to be conducted within the local jurisdiction of such High Court.
>
> D
>
> ...
>
> (4) In this section, 'place' includes cyberspace, virtual place or virtual space.

E **[12]** In s 3 of the Courts of Judicature (Amendment) Act 2020, the definition of 'remote communication technology' means 'a live video link, a live television link or any other electronic means of communication'.

F **[13]** The detailed procedure and processes pertaining to proceedings through remote communication technology was issued via Arahan Amalan Ketua Hakim Negara Bilangan 1 Tahun 2021 in respect of 'Pengendalian Prosiding Kes Sivil Melalui Teknologi Komunikasi Jarak Jauh Bagi Mahkamah Di Seluruh Malaysia' effective 8 January 2021. In *lampiran* A4 'Tatacara Pengendalian Saksi Yang Memberikan Keterangan Melalui Teknologi Komunikasi Jarak Jauh' para 20 reads as follows:

G

> Sekiranya saksi berada di luar negara dan berhasrat untuk memberikan keterangan melalui teknologi komunikasi jarak jauh permohonan hendaklah dibuat oleh peguam kepada Mahkamah dalam tempoh yang munasabah sebelum bermulanya prosiding.
>
> H

**[14]** The court in determining this application may consider the factors outlined in para 11 of the Arahan Amalan Ketua Hakim Negara No 1/2021 with respect of the conduct of civil proceedings via remote communication technology and the relevant part reads as follows:

I

> (e) sama ada mana-mana pihak akan diperjudiskan sekiranya keterangan diberikan melalui teknologi komunikasi jarak jauh;
>
> (g) sama ada saksi berada di dalam atau di luar negara dan sekiranya saksi berada di

luar negara, sebab dan alasan saksi tidak dapat memberikan keterangan di dalam negara;

(h) hak pihak-pihak untuk perbicaraan yang adil tetap terpelihara walaupun keterangan oleh saksi diberikan melalui teknologi komunikasi jarak jauh; dan

(i) apa-apa hal keadaan lain yang akan dipertimbangkan oleh Mahkamah.

**[15]** The law relating to attendance of person, witness or prisoner as witness or party is provided for under O 33A r 3 of the Rules of Court 2012 ('the ROC') with effect from 15 December 2020 to facilitate proceedings by remote communication technology which reads as follows:

3(1) In relation to the attendance of any person, witness or prisoner as witness or party, in any proceedings or the evidence to be given in person, the Court or Registrar may, on being satisfied that all the conditions specified in paragraph (2), direct the person, witness or prisoner as witness or party —

(a) to attend (other than to give evidence) in those proceedings, by means of remote communication technology; or

(b) to give evidence through remote communication technology.

(2) The conditions referred to in paragraph (1) are as follows:

...

(d) the Court or Registrar is satisfied that *sufficient administrative and technical facilities and arrangements* are made at the place where the person, witness or prisoner as a witness or party is to make an appearance or to give evidence.

**[16]** In exercising powers under O 33A r 3 of the ROC 2012, the court must be careful not to prejudice any party in the hearing of evidence. In this respect I am mindful of the inherent powers of the court to make any order as maybe necessary to prevent injustice or to prevent an abuse of the process of the court (see O 92 r 4 of the Rules of Court 2012).

**[17]** The Court of Appeal in the case of *Karen Yap Chew Ling v Binary Group Services Bhd and another appeal* [2023] 4 MLJ 792 at p 805; [2023] 7 CLJ 534 at p 545 (per Lee Swee Seng JCA delivering the judgment of the court) decided as follows:

[34] Likewise, the Rules of Court 2012 ('the ROC') was amended with the introduction of O 33A with effect from 15 December 2020 to facilitate proceedings to be conducted by remote communication technology. There was also the introduction of the Arahan Amalan Ketua Hakim Negara Bilangan 1 Tahun 2021 with respect to the conduct of civil proceedings via remote communication technology.

[35] The decision to use the remote communication technology is at the *discretion of the court* as stated in the above practice direction. It is further stated that the court

may have regard to the *complexity of the case, the time to be taken for the taking of evidence, the quality of the internet transmission speed and the stability of the internet* in the court's concerned. The trial judge always retains a full discretion on the manner a trial is to be conducted.

**[18]** The High Court decided in the case of *Ing Bank NV v Anish Resources Sdn Bhd* [2022] MLJU 591 as follows:

> Our courts now from the Federal Court right down to the magistrates' courts are equipped to hear cases through 'remote communication technology'. This is a development that we can all justly be proud of. After all, the well-known legal maxim is justice delayed is justice denied.

AFFIDAVIT IN SUPPORT OF 12TH DEFENDANT (ENCL 718)

**[19]** In para 3 of encl 718, the 12th defendant prayed for an order, inter alia, that leave be granted for the 12th defendant to testify through remote communication technology ('RCT') by way of Zoom (or any other platform of similar nature as may be directed by the court) *throughout the entire proceedings*.

**[20]** Reference is made to the reasons outlined in para 6 of encl 6 to support the 12th defendant's application, inter alia, that the 12th defendant have relocated to Maryland USA since the year 2017 and is currently gainfully employed as a preschool teacher.

**[21]** In para 6(e) of encl 718, the 12th defendant referred to a letter dated 25 March 2024 (exhibited in AMY2) by Messrs Azim, Tunku Farid & Wong ('ATFW') to the plaintiffs' counsel Messrs Lee Hishamuddin Allen & Gledhill ('LHAG') where para 3 of the said letter inquired whether the plaintiffs are agreeable for the 12th defendant to testify via Zoom in the event that the trial is conducted physically, as she has relocated to the United States.

**[22]** By letter dated 3 May 2024 LHAG in their reply to ATFW states that they are not agreeable for the 12th defendant to testify via Zoom at the trial of this case (see letter by ATFW dated 7 May 2024 para 3 in encl 585).

**[23]** By letter dated 16 May 2024 (encl 601) LHAG informs court of their reasons why the plaintiffs are not agreeable to the 12th defendant's application for her evidence to be adduced by way of Zoom. In para 6 of encl 601, the plaintiffs prays for the evidence of the 12th defendant to be conducted physically and that the 12th defendant's application be dismissed.

**[24]** By letter dated 24 May 2024 ATFW in encl 609 outlined the reasons for the 12th defendant to testify via Zoom as outlined in the grounds in para 5(a) to (f). *As the zoom hearing is regarded as an open court proceeding and*

*any interested parties may request for the Zoom link from the court*. The 12th defendant states that the evidence by Zoom ought to be allowed on the balance of convenience and the 12th defendant reserved her right to file a notice of application in respect of this issue.

SUBMISSIONS OF 12TH DEFENDANT (ENCLS 881 AND 889)

**[25]** The 12th defendant submits that this application ought to be allowed for the following reasons:

(a) the 12th defendant has relocated to Maryland, USA since 2017;

(b) the uncertainty of the timetable of the trial in light of the multiple parties, trial dates and witnesses involved;

(c) there is a real danger and substantial risk of the 12th defendant losing her employment if this application is not allowed;

(d) effective measures can be imposed to ensure that the rights of the parties to a fair trial are preserved;

(e) there is no prejudice suffered by the plaintiffs. On the contrary, greater hardship will be suffered by 12th defendant; and

(f) it is in the interest of justice to allow this application.

**[26]** The 12th defendant submits that on the uncertainty of the trial schedule in the light of the parties, trial dates and witnesses involved stating that there were a total of *31 parties* and *19 law firms* involved in both the main suit and counterclaim and *40 witnesses* based on the list of witnesses filed by parties.

**[27]** According to the 12th defendant she is familiar with the process and relevant protocols and has the experience in testifying through remote communication technology where she testified as the fifth defendant from New York USA in the High Court case of *Low Han Kok & Anor v Yap Sien Toh & Ors* [2023] MLJU 741.

**[28]** The 12th defendant submits that conducting proceedings remotely is more efficient in the present case in view of the volume of the trial documents and parties involved. The counsel can utilise the 'share screen' function to display relevant or specific documents during the trial, without the need to sift through the voluminous physical documents, which is time-consuming.

**[29]** The 12th defendant filed the submissions in reply (encl 889) on 5 May 2025 maintaining that this application ought to be allowed on the following reasons:

(a) there are good reasons, and it is in the interest of justice to allow this application; and

(b) the cost and inconvenience raised by the plaintiffs are non-issues if sufficient safeguards were imposed.

SUBMISSIONS OF THE PLAINTIFFS (ENCLS 884 AND 890)

**[30]** The plaintiffs (FELDA and FIC) submit that the 12th defendant ought to give evidence by way of a physical appearance, instead of by Zoom, for the following reasons:

(a) *prescribed mode of trial*: that the parties to a trial must follow the court's prescribe more of trial unless there are compelling reasons to deviate from it as decided in the case of *Karen Yap Chew Ling* as follows:

> [24] Parties to a trial must follow the court's timetable and *prescribed mode of trial* unless there are compelling reasons to deviate from the trial dates fixed by the court or the prescribed mode of trial via being physically present to give evidence-in-chief and to be cross-examined by the opposing counsel and then to be re-examined by one's own counsel.

(b) there is ample time for the 12th defendant to make the necessary arrangements for her to travel back to Kuala Lumpur and be present in court;

(c) in the light of the nature of the dispute by the plaintiffs against the 12th defendant involving serious issues of conspiracy, fraud and dishonest assistance, the examination of the 12th defendant must be done by way of a physical trial;

(d) the effectiveness of cross-examination would be impacted in the event the 12th defendant give evidence via Zoom as reflected in the case of *Karen Yap* as follows:

> [27] It is not that cross-examination cannot be done remotely via the Zoom technology but *the effectiveness of it may be lost due to lagging, poor internet connectivity and also the costs of engaging a supervising solicitor to ensure no prompting during the cross-examination*. There is also the difficulty of ensuring that during the breaks the witness does not communicate with her counsel over there in Cyprus.

(e) cost and inconvenience to court and other parties.

**[31]** The plaintiffs filed submissions in reply in encl 890 on 5 May 2025. The plaintiffs reiterated that the 12th defendant is a material witness and it is undisputed that the 12th defendant that she was the main partner and solicitor involved in the preparation, execution and carrying out the disputed agreements and instruments.

ANALYSIS AND FINDINGS

**[32]** I have read and perused the affidavits in support, written submissions and authorities filed by the 12th defendant and the plaintiffs. I have also considered the oral submissions and arguments forwarded and articulated by the respective parties' counsel.

**[33]** The application by the 12th defendant for the evidence to be conducted by Zoom is hereby *disallowed* on the following reasons:

(a) the 12th defendant and the plaintiffs had earlier in their respective letters to court as reflected in encl 601 and encl 609 forwarded the reasons for the evidence of the 12th defendant to be conducted by Zoom or physically in open court;

(b) even though the 12th defendant in encl 609 clearly states their right to file a notice of application which was filed in encl 717 on 7 December 2024, this application filed is akin to having a second bite of the cherry;

(c) on record during the case management on 13 September 2024, the 12th defendant's counsel applied orally the request of the 12th defendant to testify by Zoom as the 12th defendant is currently residing in the United States. The court has directed that the 12th defendant to testify physically in court, for that matter this case in *its entirety* (also see para 19) including the case management to be dealt with by physical attendance;

(d) *public interest*. This case is not an ordinary case, this is a case of public interest and must be dealt with efficiently, effectively and expeditiously. The Court of Appeal in the case of *Abd Rahman bin Soltan & Ors v Federal Land Development Authority & Anor and other appeals* [2023] 4 MLJ 318 at p 355–358; [2023] 7 CLJ 705 at pp 738–739 decided that it is in the public interest for this suit to be completed expeditiously;

(e) *interest of justice*. The 12th defendant in encl 718 (para 20) states that the justice of the case lies in favor of granting the application for evidence by Zoom. For the record, this case involves two plaintiffs Federal Land Development Authority and Felda Investment Corporation Sdn Bhd and 21 defendants in the main suit. In the counter claims there are four plaintiffs (defendants 5, 6, 7 and 8 in the main suit) against 22 defendants (defendants 1, 2, 3, 4, 9, 10, 11, 16, 17, 18, 19 and 20 in the main suit). All the parties are represented by lawyers from multiple legal firms;

(f) in considering whether the hearing of evidence by the 12th defendant ought to be conducted by remote communication technology, I have to be mindful of the many parties involved in this suit (see para 26) and Suit

WA-22NCvC-477–07 of 2019 to be heard together as directed by court. The list of parties (if to be tabulated) involved in both Suits 843 and 477 is not exhaustive as the respective parties, their representatives, counsel representing the parties and their assisting counsel and witnesses are yet to be restricted in numbers when attending the court proceedings;

(g) in exercising the court's powers under O 33A r 3 of the ROC 2012, I find that if the evidence of the 12th defendant is allowed to be conducted by Zoom, this order *if granted* would be prejudicial to the other parties in this suit and in Suit 477. The interest of justice is best served when the entire judicial proceedings of these suits is dealt with physically in open court. The 12th defendant was sued as a partner of Messrs Yeap, Yong & Amy and not in her personal capacity. Hence, the grounds that justice of the case lies with allowing the 12th defendant to testify remotely is not justifiable in the circumstances of the case; and

(h) needless to say, in exercising the inherent powers of the court to make any order as may be necessary to prevent an abuse of the process of the court under O 92 r 4 of the ROC 2012, the court hereby orders the 12th defendant to testify physically. This order is deemed necessary and appropriate in the interest of justice and further to ensure that justice is achieved in the interest of not only the 12th defendant but also in the interest of all the other parties, thus preserving the rights of the parties in the main action and in the counter claim.

**[34]** The court when deliberating on the reasons and justification for the evidence of the 12th defendant to be given by Zoom, referred to the factors to be considered as reflected in the Arahan Amalan KHN No 1/2021 in paras 11(e) and (g).

DECISION

**[35]** Based on the aforesaid reasons, *prayer (a) of encl 717 is dismissed with costs of RM6,000* to be paid forthwith by the 12th defendant to the plaintiffs. Consequently, prayers (b), (c) and (d) of encl 717 are also dismissed.

*Application dismissed.*

Reported by Nabilah Syahida Abdullah Salleh